



July 18, 2001

Mr. Robert E. Luna
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2001-3112

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149597.

The Midlothian Independent School District (the "district"), which you represent, received a request for fourteen categories of information pertaining to the district's athletic program. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹ We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may make comments stating why information should or should not be released).

We note at the outset that section 552.022 of the Government Code makes certain information expressly public unless it is confidential under other law. Four categories of expressly public information under section 552.022 are:

(a)(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body; (a)(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; (a)(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and (a)(13) a policy statement or interpretation that has been adopted or issued by an agency.

See Gov't Code § 552.022(a). Many of the submitted documents which we have marked are encompassed by these categories. Furthermore, several of these documents appear to be "working papers, research materials, and information" used to estimate the expenditure of public funds by a governmental body. These particular documents are subject to section 552.022, if the estimates associated with the documents have been completed. You claim that the submitted documents are excepted from disclosure pursuant to section 552.103 of the Government Code. However, we have previously concluded that section 552.103 is a discretionary exception that does not make information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation, and does not itself make information confidential). Accordingly, the district must release the marked information pursuant to section 552.022(a) of the Government Code.

We also note that the minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code § 551.022. Information made specifically public by statute may not be withheld from disclosure by any exceptions to disclosure under the Public Information Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the district must release the marked minutes of the district's Board of Trustees to the requestor.

You claim that submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The district has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and

(2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103.

Based on your statements and on the information submitted to our office, we conclude that litigation is pending against the district. Therefore, we conclude that the first prong of section 552.103 has been satisfied. We also find that you have adequately explained how the requested information relates to the subject matter of the pending litigation. Therefore, we conclude that the second prong of section 552.103 has been satisfied. We note, however, that once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed.² Furthermore, once a governmental body voluntarily makes part or all of its information available to the public, it must be made available to any person. *See* Gov't Code § 552.007(a), (b). It appears that a large amount of the submitted information has been made available to the public. To the extent that any of the submitted information has been made available to the public, it is not excepted from disclosure pursuant to section 552.103 and must be released to the requestor.

In summary, the district must release the marked information pursuant to section 552.022 of the Government Code. However, if the previously referenced estimates have not been completed, section 552.022(a)(5) is inapplicable and, except as otherwise noted herein, the marked working papers associated with those estimates may thus be withheld from disclosure pursuant to section 552.103. The district must release the marked minutes of the district's Board of Trustees to the requestor. The district must release all information which has been obtained from or provided to the opposing party in the litigation, as well as any information that has been voluntarily made available to the public. The district may withhold the remaining information pursuant to section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

² In addition, we note that the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

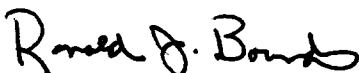
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 149597

Enc. Marked documents

cc: Mr. Allen Taylor
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(w/o enclosures)